

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

-----x 15-CR-95 (WFK)

3 UNITED STATES OF AMERICA,

4 Plaintiff,

United States Courthouse  
Brooklyn, New York

5 -against-

September 9, 2019  
2:30 p.m.

6 DILKHAYOT KASIMOV,

7 Defendant.

8 -----x  
9 TRANSCRIPT OF CRIMINAL CAUSE FOR ORAL ARGUMENT  
10 BEFORE THE HONORABLE WILLIAM F. KUNTZ, II  
UNITED STATES DISTRICT JUDGE

11 APPEARANCES

12 For the Government: UNITED STATES ATTORNEY'S OFFICE  
13 Eastern District of New York  
271 Cadman Plaza East  
14 Brooklyn, New York 11201  
BY: DOUGLAS M. PRAVDA  
DAVID K. KESSLER  
MATTHEW HAGGANS  
15 Assistant United States Attorneys

16 For the Defendant: ELIZABETH E. MACEDONIO, P.C.  
17 Dilkhayot Kasimov 40 Fulton Street - 23rd Floor  
New York, New York 10038  
18 BY: ELIZABETH E. MACEDONIO, ESQ.

19 KELLEY J. SHARKEY  
20 26 Court Street - Suite 2805  
Brooklyn, New York 11242  
21 BY: KELLEY J. SHARKEY, ESQ.

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7                   Attorney for Defendant: LAWRENCE MARK STERN  
8                   Azizjon Rakhmatov                   100 Hudson Street, #6A  
9                   New York, New York 10013  
10                  BY: LAWRENCE MARK STERN, ESQ.  
11

12                  Also Present:                   ERIKA LOPEZ, PARALEGAL  
13

14                  Court Reporter:                   LINDA D. DANIELCZYK, RPR, CSR, CCR  
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17

18                  Proceedings recorded by mechanical stenography. Transcript  
19                  produced by computer-aided transcription.  
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21                  \*           \*           \*           \*           \*

22                  (In open court.)  
23

24                  THE COURTROOM DEPUTY: All rise.  
25

26                  The Honorable William F. Kuntz, II is now presiding.  
27

28                  Criminal cause for oral argument, Docket Number 15-CR-95,  
29                  U.S.A. versus Kasimov.  
30

31                  Counsel, please state your appearances for the  
32                  record, and spell your first and your last names for the court  
33                  reporter.  
34

35                  MR. KESSLER: Good afternoon, Your Honor. David

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1 Kessler, D-A-V-I-D, K-E-S-S-L-E-R, for the government. I'm  
2 joined by my colleague, Matthew Haggans, M-A-T-T-H-E-W,  
3 H-A-G-G-A-N-S, and a paralegal Erika Lopez, E-R-I-K-A,  
4 L-O-P-E-Z. And we will momentarily be joined by Doug Pravda.

5 THE COURT: Good afternoon. You may be seated.

6 MR. KESSLER: Thank you.

7 THE COURT: And you may be seated in the public,  
8 gentlemen, as well.

9 MS. MACEDONIO: Good afternoon, Your Honor.  
10 Elizabeth Macedonio for Mr. Kasimov. E-L-I-Z-A-B-E-T-H,  
11 M-A-C-E-D-O-N-I-O.

12 THE COURT: Good afternoon, Ms. Macedonio. Please  
13 be seated.

14 MS. SHARKEY: Good afternoon, Your Honor. Kelley  
15 Sharkey, K-E-L-L-E-Y, S-H-A-R-K-E-Y for Mr. Kasimov.

16 THE COURT: Good afternoon, Ms. Sharkey. Please be  
17 seated.

18 And to your right is the interpreter.

19 Would you state your name, sir.

20 MS. SHARKEY: No, this is my colleague.

21 THE COURT: It's your colleague. Okay.

22 MR. RUBERT-SCHEWEL: Abraham Rubert-Schewel,  
23 A-B-R-A-H-A-M; last name R-U-B-E-R-T, hyphen, S-C-H-E-W-E-L.

24 THE COURT: Thank you. You may be seated as well.

25 And do we have an interpreter, and do we need an

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1 interpreter?

2 MS. MACEDONIO: No, Your Honor, we do not have an  
3 interpreter. I conferred with Mr. Kasimov, and he has agreed  
4 to go forward for today's purposes without the assistance of  
5 an interpreter.

6 And I would add that counsel has been able to  
7 communicate with Mr. Kasimov without the assistance of an  
8 interpreter.

9 THE COURT: Thank you.

10 Is that acceptable to the government?

11 MR. KESSLER: Yes, Your Honor.

12 THE COURT: All right. Thank you.

13 I see that Mr. Pravda has arrived. Thank you.

14 Would you spell your name for the record, sir?

15 MR. PRAVDA: I will, Your Honor. My apologies. I  
16 spend out to use the restroom.

17 THE COURT: I understand. I will not inquire  
18 further.

19 MR. PRAVDA: I knew the exact moment the Court would  
20 come down.

21 Douglas Pravda, D-O-U-G-L-A-S, P-R-A-V-D-A. Thank  
22 you, Your Honor.

23 THE COURT: Thank you, sir. Please be seated.

24 We're here on the oral argument in the case United  
25 States versus Juraboev, 15-CR-95, for the remaining defendant,

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1 Mr. Kasimov. The defendant who is present is in currently in  
2 custody.

3 The background of the action is as follows:

4 On May 9th of 2016, the United States of America  
5 filed the third superseding, which I will refer to as the S3  
6 indictment in this action, which named the following  
7 defendants: Mr. Akhror Saidakhmetov, Mr. Abror Habibov,  
8 Mr. Azizjon Rakhmatov, Mr. Akmal Zakirov, and Mr. Kasimov.

9 The defendants, Saidakhmetov, Habibov, Zakirov and  
10 Rakhmatov have all pled guilty in the action.

11 The defendant, Mr. Juraboev, was not named in the S3  
12 indictment because he pled guilty on August 14th of 2015,  
13 before the date of the S3 indictment, and this Court sentenced  
14 him to a term of 180 months of incarceration on October 27th  
15 of 2017.

16 The S3 indictment charges the defendant with  
17 conspiracy to provide material support to a foreign terrorist  
18 organization, known as an FTO, and attempt to provide material  
19 support to a foreign terrorist organization.

20 Trial is currently scheduled to commence a week from  
21 today, September 16th, 2019.

22 Both the defendants and the government have filed  
23 several motions *in limine*, and the Court's scheduled oral  
24 argument on the motions for today, September 9th, 2019 at  
25 2 p.m.

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1           Although the motions, except the defendant's motion  
2 for discovery, was scheduled to be fully briefed on or before  
3 August 30th of 2019, the parties have continued to file motion  
4 papers since that time and the Court has, of course, reviewed  
5 them.

6           Below is a list of the motions that have been  
7 briefed for the Court's consideration.

8           Filed by codefendant Rakhmatov, and joined by the  
9 defendant: One, a motion to dismiss Counts One and Two filed  
10 on ECF number 326 on 6/27/2019, and a response filed by the  
11 government on ECF number 362, 8/16/2019.

12           Filed by the government, motion to admit statements  
13 as to defendant, ECF number 328 filed on 6/28/2019.

14           A sealed response filed by the defendant, ECF number  
15 359 filed 8/14/2019.

16           A response in support filed by the government, ECF  
17 number 373, filed 8/30/2019.

18           Motion *in limine* to preclude entrapment and  
19 derivative entrapment defense, ECF number 348, filed 8/2/2019.

20           Motion *in limine* for protective order regarding 3500  
21 material and *Giglio* material, ECF number 349, filed 8/2/2019.  
22 Granted on 9/3/2019 at ECF number 382.

23           Consent motion for a protective order, ECF number  
24 381, filed 9/3/2019, granted on 9/4/2019, ECF number 386.

25           Motion for an anonymous and partial sequestered

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1 jury, ECF number 350, filed 8/2/2019.

2 Response filed by defendant, ECF number 353, filed  
3 8/9/2019.

4 Response in support filed by the government, ECF  
5 number 375, filed 8/30/2019.

6 Notice of intent to call expert witness, ECF number  
7 354, filed 8/9/2019.

8 A motion to exclude expert testimony to produce  
9 statements and 3500 material, ECF number 360, filed 8/15/2019.

10 Response in opposition filed by the government, ECF  
11 number 376, filed 8/30/2019.

12 Supplemental notice of government's intention to  
13 call expert witnesses, ECF number 379, filed 8/30/2019.

14 Filed by the defendant, I note the sealed motion to  
15 suppress FISA evidence, ECF number 336, filed 7/9/2019.

16 A sealed opposition filed by the government,  
17 including classified information, ECF number 361, and in the  
18 SCIF filed 8/16/2019.

19 Second motion for discovery and other relieve, ECF  
20 number 337, filed 7/22/2019.

21 A response filed by the government, ECF number 355,  
22 filed 8/9/2019.

23 Further response filed by the government, ECF number  
24 362, filed 8/16/2019.

25 Next, motion *in limine* and seeking other relieve,

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1 ECF number 347, filed 8/2/2019.

2 Next, motion for release of *Brady* material, ECF  
3 number 371, filed 8/30/2019.

4 A response in opposition filed by the government,  
5 ECF number 385, filed 9/3/2019.

6 On August 30th of 2019, the government and defendant  
7 also filed their respective proposed jury instructions,  
8 verdict form, and *voir dire*. See ECF numbers 374, 377, 378.

9 The government also filed its proposed witness list.  
10 See ECF number 380.

11 Are there any other documents that the parties would  
12 like to call to the Court's particular attention at this time?

13 I will note that the Court has received the  
14 government's letter filed on ECF of August 16th with respect  
15 to the change in plea proceedings.

16 The Court has received the motion to suppress pen  
17 register and trade cell site information, telecommunication  
18 records, and all other data and information obtained from  
19 defendants clothes and carrier that have been filed by  
20 Mr. Lawrence Mark Stern and Mr. James Neuman.

21 The Court has received and reviewed the  
22 September 4th, 2019 letter from the United States Government  
23 concerning Rule 16 discovery, and the September 5th, 2019  
24 letter from the government concerning pretrial disclosures  
25 produced pursuant to stipulations to protective orders entered

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1 by the Court.

2 From the government, anything else I should refer to  
3 before we get started on the argument?

4 MR. PRAVDA: No, Your Honor.

5 THE COURT: From defense counsel?

6 MS. MACEDONIO: No, Your Honor.

7 THE COURT: Okay.

8 I'm going -- we'll take you later, Mr. Stern.

9 Okay. Miss Macedonio, you seem to have the lion's  
10 share and, Ms. Sharkey, of the motions. I'm happy to have you  
11 start wherever you would like to start, or if you would prefer  
12 to have the government start, you can have the government  
13 start and take the motions in whatever order you wish.

14 How would you like to proceed?

15 MS. MACEDONIO: We can start, Your Honor.

16 THE COURT: Okay.

17 MS. SHARKEY: Judge, we've split up the different  
18 motions, so with the Court's permission, we will be addressing  
19 different topics, if that's acceptable.

20 THE COURT: Of course.

21 MS. SHARKEY: Okay. So I'm addressing the issue of  
22 discovery and *Giglio* compliance.

23 As Your Honor noted in your fulsome recitation of  
24 the motions filed in this case, there has been a lot of back  
25 and forth as to requests by counsel responses, agreements,

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1 some disagreements.

2 The Court should know that there has been a  
3 productive off-the-record conversation with the government and  
4 defense counsel, and it's been pretty cooperative.

5 There are some failures of agreement, and I think  
6 I'll just spend my time briefly addressing those.

7 THE COURT: Take your time.

8 MS. SHARKEY: Your Honor, in the discovery motion  
9 dated -- that the Court mentioned, dated August 30th, counsel  
10 memorialized requests concerning *Brady* issues and Rule 16  
11 issues that we believe the government has not complied with.  
12 This also includes *Giglio* motions.

13 Directing the Court to page 2 of that, counsel  
14 identified a series of bullet points -- by a series of bullet  
15 points, excuse me, information that we have not received from  
16 the government concerning the cooperating witnesses in this  
17 case.

18 And we believe that not only are we entitled to  
19 them, but we've received them from -- in different  
20 prosecutions right up to trial.

21 Specifically, Judge, we were -- we requested the  
22 immigration charges, warrants, and investigations, including  
23 the A-File of the two cooperating witnesses. Both of those  
24 witnesses were defendants on the case before they became  
25 cooperators.

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1           THE COURT: Just so the record is clear, would you  
2 state their names?

3           MS. SHARKEY: Sure.

4           [REDACTED].

5           THE COURT: Got it. Go ahead.

6           MR. PRAVDA: Your Honor --

7           THE COURT: No, no, let her finish.

8           We're going to let them argue and then --

9           MR. PRAVDA: Well, I would like to object to placing  
10 the names of the cooperating witnesses on the record, Your  
11 Honor, especially in the presence of counsel for a defendant  
12 who had pleaded guilty, and whose client is not entitled to  
13 know which codefendants are cooperating.

14           There is nothing to prevent that defendant from  
15 sharing the name of the cooperating witnesses of other  
16 individuals at the MDC, and those cooperating witnesses might,  
17 therefore, face retaliation for their cooperation.

18           THE COURT: Are we going to trial next week, right?

19           MR. PRAVDA: Yes, we are.

20           THE COURT: And at that point is it going to be  
21 known who the cooperating witnesses are to the world when you  
22 go to trial, Mr. Pravda? Or is that going to continue to be  
23 something that people won't know?

24           MR. PRAVDA: At that time their identities would be  
25 public, but not between now and then.

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1           THE COURT: Okay. Well, all due respect, I'm going  
2 to let them argue.

3           I'm going to ask you to try to be as discreet as you  
4 can. I did ask for the names. So if you want to request that  
5 that portion of the record be sealed, I have no problem with  
6 having the names under seal.

7           Any objection to that?

8           MS. SHARKEY: No objection.

9           THE COURT: All right, so we'll put that portion of  
10 the record. And the only people that I see in the courtroom  
11 are Mr. Stern and Mr. Rucker, other than court personnel and  
12 the parties, so we're going to keep that under seal.

13           And I don't think it's any news to the people who  
14 are sitting in the public gallery, but in any event, we'll  
15 have that portion of the record under seal.

16           Does that satisfy you, Mr. Pravda?

17           MR. PRAVDA: If by being "under seal" means that  
18 Mr. Stern is not allowed to further share that information --

19           THE COURT: All right, Mr. Stern, I'm directing you  
20 you're not allowed to further share that information. And  
21 that will be part of the order of the Court.

22           Does that satisfy you, Mr. Stern?

23           I'm sorry, Mr. Pravda, does that satisfy you?

24           Does that satisfy you, Mr. Pravda?

25           MR. PRAVDA: Yes, Your Honor.

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1           THE COURT: Okay.

2           Does that satisfy you, Ms. Sharkey?

3           MS. SHARKEY: No objection.

4           THE COURT: Okay, fine. That's how we'll do it.

5           All right, continue.

6           MS. SHARKEY: So, Your Honor, concerning the two  
7 cooperating witnesses, both of them are from Uzbekistan and  
8 would have had to have filed immigration papers to enter the  
9 United States.

10          In addition, both of them are in violation of  
11 immigration laws of the United States, and we are requesting  
12 that the Court direct government to provide defense counsel,  
13 prior to the opening statements on this case, the warrants,  
14 the investigations, the A-File, and other applications for  
15 relief from removal.

16          THE COURT: Okay, what is your response to that  
17 request prior to trial?

18          MR. PRAVDA: Your Honor, the A-Files that are the  
19 subject of that request are not in the possession of  
20 prosecution team. Counsel for the defendant just raised that  
21 with the government before Your Honor entered the courtroom,  
22 and we said that we would take that into consideration.

23          We would like the opportunity to research whether or  
24 not there's actually an obligation upon the government to  
25 provide that material when it's not in the possession of the

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1 prosecution team. So we'd like to do that and then be able to  
2 respond.

3 THE COURT: What is your response to their response,  
4 Ms. Sharkey?

5 MS. SHARKEY: My response to that is I routinely  
6 receive the A-File on witnesses testifying. I had a case in  
7 front of Judge Korman where it was a matter of course that the  
8 A-File was produced to counsel prior to opening statements.

9 The A-File typically -- I shouldn't say "typically".  
10 The A-File, in my experience, with individuals who have run  
11 afoul of our laws in the United States are recitations by  
12 those individuals justifying or requesting reasons for  
13 entrance or continued presence in the United States.

14 THE COURT: In Korman's case, for example, was it  
15 produced under seal, or was it produced?

16 MS. SHARKEY: It wasn't produced under seal.

17 THE COURT: It was not produced under seal.

18 MS. SHARKEY: And it was from a cooperating witness.

19 THE COURT: All right. How much time do you think  
20 you need, Mr. Pravda, to either advise the Court that you have  
21 complied with Ms. Sharkey's request or that you're not going  
22 to comply with Ms. Sharkey's request, and then I will make the  
23 ruling.

24 I know we're scheduled to have another status  
25 conference in this case on Thursday; is that right? Is that

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1 correct?

2 MS. SHARKEY: Yes, Your Honor.

3 MR. KESSLER: Yes.

4 THE COURT: All right. So let's just say we'll  
5 leave it at this.

6 Come Thursday, you will advise Ms. Sharkey and  
7 Ms. Macedonio as to whether or not you're going to comply with  
8 the request for the A-File.

9 If you're going to comply with it, that's fine, I  
10 won't have to rule; and if you're not going to turn it over,  
11 then I will rule.

12 But I have tremendous respect for my brother  
13 Judge Korman. Spoiler alert. Whom I've known for 30 years  
14 and whom I consider -- I mean, Jack Weinstein is my big, big  
15 brother, and Sterling Johnson is my big brother, and Ed Korman  
16 is my Dutch uncle, so I'm just saying.

17 Any way, go ahead.

18 MS. SHARKEY: Your Honor, the other request that I  
19 would ask the Court to review is that we have also asked  
20 government counsel, in regards to the cooperating witnesses,  
21 to provide defense counsel with any investigations concerning  
22 those witnesses in the case.

23 Both of those witnesses have come attention,  
24 obviously, to the government. Both of them have been  
25 investigated. We've been provided with very fulsome discovery

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1 on this particular event, the charged event.

2 We also note, from our review of the 302s, that  
3 these witnesses were asked about other individuals under  
4 surveillance or under supervision. If there are any other  
5 findings, aside from the 302s that we've received that reflect  
6 upon those witnesses' criminal activities, we're certainly  
7 allowed to cross-examine about other bad acts, and we would  
8 request that the Court direct the government to provide us  
9 with any such findings or 302s by other investigatory  
10 agencies.

11 THE COURT: Are you seeking to expand the law of 404  
12 admissibility?

13 MS. SHARKEY: But not for -- I understand the  
14 Court's question, but not for cooperating witnesses.

15 THE COURT: I'm just asking.

16 MS. SHARKEY: No. I don't -- I don't seek to expand  
17 it, but I do seek to pursue the government in providing  
18 defense counsel with all bad acts of their witness that would  
19 affect their credibility for the finder of fact in this case.

20 THE COURT: What is your response to that request  
21 for -- somehow I'm having an out-of-body experience here.  
22 You're pushing for a 404, but then again, that's one of the  
23 joys of this position.

24 What is your response to what Ms. Sharkey has just  
25 articulated?

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1                   MR. PRAVDA: One moment, Your Honor, I found  
2 Ms. Sharkey's description confusing, so I just want to consult  
3 with my colleague to make sure I understand what it is.

4                   THE COURT: Okay. Do you want to state it again?

5                   MS. SHARKEY: Let me state it again.

6                   It's not a 404 for the witnesses, it's *Giglio* for  
7 their witnesses.

8                   THE COURT: Okay, *Giglio*.

9                   MS. SHARKEY: I should have --

10                  THE COURT: No, no --

11                  MS. SHARKEY: -- clarified that.

12                  THE COURT: -- I'm the one that created the muddle,  
13 so forgive me. I do that sometimes.

14                  MS. SHARKEY: Me too.

15                  THE COURT: Not as much as I do, but...

16                  MR. PRAVDA: Your Honor, I believe that we have  
17 provided all of that to the defense.

18                  THE COURT: To the extent that you have not provided  
19 any of it to the defense, are you prepared to provide it or to  
20 advise the Court at our conference on Thursday as to what  
21 you're not providing them and why you're not providing it to  
22 them?

23                  MR. PRAVDA: I'm certainly prepared to provide any  
24 *Giglio* information of the government's cooperating witnesses.

25                  I just don't believe that there's anything that is

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1 out there now that has not already been provided.

2 THE COURT: I get it. If you have provided  
3 everything that defense counsel is asking for, that's fine.

4 Right, Ms. Sharkey?

5 MS. SHARKEY: That's correct.

6 THE COURT: Okay. So you can't give them what  
7 doesn't exist. So if it doesn't exist, you'll just confirm it  
8 doesn't exist at Thursday's conference; and if it does exist,  
9 you will either provide it for them or explain why they're not  
10 entitled to the *Giglio* material and then I will rule on  
11 Thursday at our conference promptly from the bench.

12 MS. SHARKEY: And, Judge, may I just say that the  
13 list is on the August 30th letter on the second page.

14 THE COURT: Yes, I know, and more importantly my law  
15 clerks know. So we got that.

16 MS. SHARKEY: Thank you.

17 I'm finished with me portion.

18 THE COURT: Okay.

19 Miss Macedonio?

20 MS. MACEDONIO: Your Honor, I'm going to be covering  
21 the government's application for expert testimony in the case.

22 THE COURT: Yes.

23 MS. MACEDONIO: And I am addressing the expert --  
24 not the linguist who they propose to have testify at the  
25 trial, but --

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1           THE COURT: You are going to talk about the expert  
2 who is going to tell everybody about ISIS back in the day?

3           MS. MACEDONIO: Correct.

4           THE COURT: To use the generic term.

5           MS. MACEDONIO: Yes.

6           So it's important for the Court to know that -- or  
7 at least with respect to this argument, that Mr. Kasimov is  
8 charged with two counts of the superseding indictment.

9           Count One charges him with a conspiracy to provide  
10 material support to an FTO, and Count Two charges him with an  
11 attempt to do the same.

12           So accordingly, the government must establish that  
13 Mr. Kasimov --

14           THE COURT: I'm going to ask to you slow it down.

15           MS. MACEDONIO: I'm sorry.

16           THE COURT: Lord Vader and Woody Allen or Annie Hall  
17 or on the side of Chris Rock. Slower --

18           MS. MACEDONIO: Okay.

19           THE COURT: -- please. Go ahead.

20           MS. MACEDONIO: The government must establish that  
21 Mr. Kasimov knowingly conspired and attempted to provide  
22 material support or resources to an FTO.

23           My first application, Your Honor, is that the expert  
24 should not be permitted in any case to testify prior to the  
25 government's calling of the two cooperating witnesses in this

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1 case.

2 Those witnesses, it would seem, would have more  
3 knowledge -- the expert would have no knowledge of  
4 Mr. Kasimov's knowing what was going on in his mind or his  
5 intent. So for that, the expert has no relevant testimony  
6 whatsoever.

7 THE COURT: Isn't the expert being called to be the  
8 table setter to set the context for what the cooperating  
9 witnesses will testify with respect to what might or might not  
10 have been going on with respect to this alleged conspiracy?

11 MS. MACEDONIO: But what's at the issue, the crux of  
12 what is at issue in this case, is Mr. Kasimov's intent and his  
13 knowledge.

14 THE COURT: No question about that.

15 But having said that, and I accept that, all right,  
16 the question I'm asking you is: The purpose, as I understand  
17 it from the government's papers, of the expert is to say this  
18 is what had the world of ISIS was up to back at the period of  
19 the alleged conspiracy, this is the lay of the land. ISIS may  
20 or may not have moved on.

21 But in terms of what you're going to hear testimony  
22 about, let us take you back to those halcyon days of 2013,  
23 '14, '15. That is what I understand the expert testimony --  
24 is that what you folks want to use the expert for?

25 MR. HAGGANS: That's a yes, Your Honor.

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1           THE COURT: So that's what they said in the papers.  
2 Now you're saying, no, they can't have the expert before they  
3 have the cooperating witnesses.

4           Where is that written in the law that they can't set  
5 the table, in terms of the historic, if you will, background  
6 before calling the cooperators?

7           MS. MACEDONIO: It's nowhere written in the law.

8           THE COURT: Okay.

9           MS. MACEDONIO: But if we are -- if we're trying to  
10 sort of forecast what would be relevant at this -- during the  
11 course of this trial, what would be admissible during the  
12 course of this trial, and what goes to the heart of  
13 Mr. Kasimov's guilt or innocence, and whether the expert's  
14 testimony is at all permissible. It seems to me that the  
15 expert's testimony should come in after the cooperators.

16           THE COURT: But I'm asking you where under 702 or  
17 other decisional law or rules of evidence or statutes there's  
18 a requirement?

19           MS. MACEDONIO: There is -- I'm sorry.

20           THE COURT: So there is none?

21           MS. MACEDONIO: There is no requirement.

22           THE COURT: Okay. So you're saying it's up to my  
23 discretion whether I allow the table setter to set the table  
24 before going there.

25           Okay, I just wanted to be clear on that. Go ahead.

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1 MS. MACEDONIO: So the government in its August 9th  
2 letter sets out for the Court what it intends to have the  
3 expert testify about.

4 And the first bullet is entitled "The Process of  
5 Radicalization."

6 If I'm correct, I understand that the government is  
7 no longer seeking to have the expert testify with regard to  
8 that.

9 THE COURT: Let's stop right there. Address it to  
10 the Court, and then I'll ask him.

11 Is that true?

12 MR. HAGGANS: I think that topic may come up, Your  
13 Honor. We did file a supplemental disclosure on Saturday, the  
14 7th. Unless they refer to it, we do not expect it will be a  
15 meaningful or substantial portion of the testimony.

16 THE COURT: Meaningful, substantial, these are words  
17 that make me uneasy as an old definitional Wall Street sort of  
18 guy.

19 So either you're going to do it or you want to  
20 reserve the right to do it. I mean, we're a week from trial.  
21 If we were five months from trial, I might let you get away  
22 with reasonably anticipating, but we're closer than that.

23 Are you going to go down that road or not go down  
24 that road or you want the right to go down that road, which is  
25 it?

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1                   MR. HAGGANS: I do not -- we do not intend to go  
2 that road in our direct. I can't exclude the possibility that  
3 it might come up as a result of --

4                   THE COURT: All right, well let's just limit the  
5 discussion for the moment at least to the direct.

6                   So sounds to me like they're not going to do it on  
7 direct, and I'm perfectly prepared to entertain an order that  
8 says they're not allowed to do it on the direct.

9                   Obviously, in terms of doors that are inadvertently  
10 or advertently opened by the defense one way or another, they  
11 may be allowed do it later, but I think that's where I'm going  
12 to come out on that.

13                  Go ahead.

14                  MS. MACEDONIO: Thank you, Your Honor.

15                  The second bullet in the August 9th, 2019 letter  
16 indicates that the government intends to elicit testimony from  
17 the expert regarding the manner and means by which ISIS and  
18 its apparent recruited followers and foreign fighters to ISIS  
19 including within the United States.

20                  There is no allegation in this case that Mr. Kasimov  
21 had been recruited. There is no allegation in this case that  
22 he intended to travel to join ISIS.

23                  The fact pattern, as I understand the government  
24 will be alleging, is that at the 11th hour Mr. Kasimov shows  
25 up at John F. Kennedy International Airport and hands money

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1 over to another individual.

2 I don't see how this evidence is relevant to his  
3 guilt or innocence given that fact patter.

4 THE COURT: Okay. Let me hear the response from the  
5 government.

6 MR. HAGGANS: Your Honor, this is also a topic that  
7 we address in our September 7th supplemental filing. It is --  
8 it will be important for the jury to understand the call that  
9 ISIS was making to the world as of the time of the events that  
10 are alleged in the indictment that the government has to  
11 prove.

12 Specifically that ISIS was attempting to recruit  
13 individuals from all over the world, including from within the  
14 United States, to travel to caliphate in order to join ISIS  
15 and to further its objectives.

16 The fact that the defendant may not have been  
17 individually communicated with via a known or identified ISIS  
18 adherent or a person actually in the caliphate is not a sine  
19 qua non of the government's proof in this case.

20 THE COURT: Well, this goes to the whole question of  
21 people going on websites and that sort of thing?

22 MR. HAGGANS: More than part of ISIS' publicly  
23 stated objectives, as of the time the events in the  
24 indictment, were to bring Muslims from all over the world to  
25 the caliphate in order to join up.

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1           THE COURT: So it's part of their modus operandi, if  
2 you will.

3           MR. HAGGANS: That's correct.

4           THE COURT: What's the problem with that?

5           MS. MACEDONIO: Your Honor, when I began my argument  
6 with respect to this, I talked about the cooperating witnesses  
7 and that they would have the most direct evidence or the only  
8 direct evidence with regard to what Mr. Kasimov --

9           THE COURT: I understand the direct evidence with  
10 respect to Kasimov, but they're making a different point that  
11 this is the nature of the universe in which ISIS was operating  
12 in 2015, and they want the jury to understand that that's  
13 the background.

14           Now in terms of what an individual was doing or not  
15 doing, obviously the government has the burden of proof beyond  
16 a reasonable doubt to show what he was or was not up to.

17           But in terms of what the world looked like, I don't  
18 understand why they should be precluded from having an expert,  
19 who you can certainly cross-examine and put on your  
20 countervailing expert, if I wish to do so, with respect to  
21 that point. So I don't know why they would be precluded from  
22 going forward and presenting that world view through an expert  
23 to the jury.

24           MS. MACEDONIO: Well --

25           THE COURT: They are not talking about, again, your

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1 client's individual state of mind. They don't -- that's not  
2 what this is for.

3 MS. MACEDONIO: Understood, Your Honor.

4 But the argument is that it is irrelevant to  
5 Mr. Kasimov's particular state of mind. The cooperators will  
6 testify as to precisely what happened in this case and to what  
7 Mr. Kasimov was told. And that this -- the means of which  
8 they understood people would be traveling, the cooperators  
9 will testify to that. And that this particular witness'  
10 testimony really adds nothing other than to bootstrap and --  
11 what's the word?

12 THE COURT: Enhance.

13 MS. MACEDONIO: Enhance the cooperators' testimony.

14 THE COURT: I have your argument.

15 MS. MACEDONIO: Thank you.

16 THE COURT: Okay.

17 MS. MACEDONIO: Should I move on to the next one?

18 THE COURT: Please.

19 MS. MACEDONIO: The government also asserts in its  
20 August 9th, 2019 letter that the expert, or the proposed  
21 expert, would testify with regard to the methods by which  
22 those followers traveled to ISIS controlled territory,  
23 including but not limited to Turkey.

24 The allegation in this case is that the traveler,  
25 who is believed to be Saidakhmetov who was arrested at the

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1       airport, was getting on a flight to Istanbul, Turkey.

2                  I believe the government's factual allegation is  
3       going to be that thereafter it was Saidakhmetov's intent to  
4       travel from Turkey to Syria. It doesn't really add much for  
5       the expert to get on the stand and testify that Syria is next  
6       to Turkey. We would certainly stipulate to that. And I  
7       believe, again, the cooperators are going to testify about  
8       what the plan was.

9                  One of the cooperators, whose name I will leave off  
10      the record, indeed purchased a ticket for Mr. Saidakhmetov,  
11      and so there should be ample evidence, absent the expert, to  
12      explain what the plan was.

13                 THE COURT: I have your argument.

14                 MS. MACEDONIO: Thank you, Your Honor.

15                 The role the government also advances in its  
16      August 9th, 2019 letter, the role that they want to establish  
17      through the expert, the role of foreign fighters, including  
18      those recruited from the United States with ISIS overall  
19      agenda, including but not limited to, its media and public  
20      relations strategies.

21                 I don't know how this has any part of this trial,  
22      quite frankly, I think it's wholly irrelevant. It's not an  
23      issue at all and just should not be used at the trial.

24                 THE INTERPRETER: I have your argument.

25                 MS. MACEDONIO: Finally, and the most alarming

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1 aspect of the expert's testimony is that they intend to put  
2 the expert on the stand to discuss specific acts of terrorism  
3 perpetrate by or claimed by ISIS.

4 And then in the government's motion for a partially  
5 sequestered and anonymous jury, they outline exactly what it  
6 is they intend to elicit through this expert.

7 There is absolutely no need for this, Your Honor.  
8 There are articles with respect to ISIS every single day in  
9 the newspaper. This is not something that a juror needs an  
10 expert to testify about and there is no reason to admit this,  
11 other than to inflame this jury.

12 THE COURT: I think inflamed or an absence of  
13 influence of this choice of phrase, because of some of the  
14 activities that ISIS allegedly engaged in at the time, but I  
15 have your argument, the 403 argument, essentially.

16 MS. MACEDONIO: Yes. To the extent I have -- yes,  
17 it is -- anything out that I drafted in my papers, I  
18 incorporate that part of my argument.

19 THE COURT: Of course. Of course. Thank you.

20 MS. MACEDONIO: Thank you.

21 THE COURT: Other points?

22 MR. RUBERT-SCHEWEL: Yes, Your Honor. I'm going to  
23 start by addressing our response to the government's motion to  
24 include proffer statements, if we trigger those.

25 I would start by saying that *United States v Rosemon*

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1 is the seminal case on this issue, and it clearly addresses,  
2 as I'm sure Your Honor is familiar with, what the defense can  
3 do and what the defense cannot do.

4                 The two areas that I would like to highlight are  
5 that, one, *Rosemon* clearly states that the defense may argue,  
6 specifically in applying to opening or closing, that the  
7 government has failed to prove particular elements of the  
8 crime, such as intent or knowledge.

9                 Now, in discussing that, in the body of the opinion,  
10 *Rosemon* also says that specifically, if the government does  
11 put facts into the case, the defense can then respond, for  
12 example, in summation by saying those facts do not improve --  
13 do not prove intent or knowledge.

14                 So as long as we do not put those facts in, it is  
15 our position that we are not opening the door.

16                 THE COURT: Let me stop you right there.

17                 What's your response to that observation? Do you  
18 agree, disagree?

19                 MR. PRAVDA: [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25                 THE COURT: And why can they not argue that?

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1 MR. PRAVDA: Because that would implicate the waiver  
2 of the proffer of protected statements.

3 MS. MACEDONIO: Your Honor --

4 THE COURT: Hang on. Hang on. That's why.

5 Okay, what's your response to that?

6 MS. MACEDONIO: Much to the -- in much the same way  
7 that Mr. Pravda argued that there are individuals in the room  
8 that should not be able to disclose the cooperator's name, I  
9 would ask that the Court issue the same order with regard to  
10 what we are discussing now as to --

11 THE COURT: So ordered.

12 MS. MACEDONIO: -- Mr. Kasimov.

13 THE COURT: So ordered.

14 MR. PRAVDA: No objection.

15 THE COURT: Okay. Continue.

16 MR. RUBERT-SCHEWEL: My specific response to that  
17 would be that if the government, or one of the government's  
18 witnesses introduces a fact, and the government intends to use  
19 that fact to prove intent or knowledge, then in summation, we  
20 are permitted to say that that fact does not prove intent or  
21 knowledge. And I believe that that's clear in *Rosemon*.

22 THE COURT: What is your response to that argument?

23 MR. PRAVDA: That's correct, Your Honor.

24 THE COURT: You're killing it.

25 MR. RUBERT-SCHEWEL: Well, it's early.

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1 THE COURT: I know.

2 MR. RUBERT-SCHEWEL: My second point, Your Honor,  
3 would just go to cross-examination.

4 So in that same tone or tenor, if a government  
5 witness states a fact on cross-examination, we are allowed to  
6 cross-examine based on those facts, even if those facts go to  
7 intent or knowledge, as long as we do not elicit any new facts  
8 that go to intent or knowledge.

9 THE COURT: That's a little, I think the technical  
10 legal term is zaftig.

11 What exactly are you getting at?

12 MR. RUBERT-SCHEWEL: So I have the opinion, and I  
13 can point you exactly to it.

14 THE COURT: But I mean what is your concern?

15 Give me a --

16 MR. RUBERT-SCHEWEL: Okay.

17 THE COURT: -- a hypothetical that might or might  
18 not emerge in this case, which we're trying a week from today.

19 MR. RUBERT-SCHEWEL: A hypothetical could be if we  
20 have evidence in a 302 or 3500 material that we believe goes  
21 to show that Mr. Kasimov did not have knowledge of what he was  
22 doing.

23 THE COURT: Right.

24 MR. RUBERT-SCHEWEL: If the government previously  
25 had elicited that on direct examination, we are allowed to go

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1 into it on cross. We are not allowed to go into it on cross  
2 if the government does not elicit.

3 THE COURT: What is your response to that?

4 MR. PRAVDA: I don't think that's accurate, Your  
5 Honor.

6 So if I can put this in more concrete terms.

7 THE COURT: Please.

8 MR. PRAVDA: With a hypothetical.

9 THE COURT: With a hypothetical.

10 MR. PRAVDA: If, for example, we know from Kasimov's  
11 own proffer of protected statements that Kasimov stated that  
12 cooperating witness one told him that Saidakhmetov was going  
13 to Syria to join ISIS, they cannot -- the defense cannot then  
14 be permitted to cross-examine the cooperating witness in a way  
15 that suggests that he is making that up, or that he is lying  
16 with regard to a statement that the cooperating witness might  
17 make with respect to that point.

18 THE COURT: Are you saying they can't say to the  
19 cooperator you said X, but you're a liar? They can't -- is  
20 that what you're saying, they can't call the cooperator a  
21 liar?

22 MR. PRAVDA: I think they can, Your Honor, but if  
23 they do that, that opens the door to allowing the government  
24 then to put in evidence of what Kasimov said to the government  
25 with respect to what cooperating witness one said to Kasimov.

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1           THE COURT: What's your response to that?

2           MR. RUBERT-SCHEWEL: I think that -- I think that  
3 may be correct. I think that what we are permitted to do and,  
4 again, I'll point you to page 14 of *United States v Rosemon*,  
5 which specifically goes into scope the defense counsel's  
6 cross-examination, and in it it says that -- it's talking  
7 about cross-examination, it says the questions --

8           THE COURT: Vader not Woody Allen.

9           MR. RUBERT-SCHEWEL: Sorry, Your Honor.

10          It states that the questions at issue attack the  
11 government's proof without asserting any new facts.

12          So as long as the questions do merely that without  
13 saying something like this never happened, or this never  
14 existed, I think that we are in safe territory.

15          THE COURT: Well, I tell you what I'm going to do,  
16 because now we're having lots of very interesting hypothetical  
17 questions and answers.

18          I think we're going to try this case a week from  
19 today, and questions will be asked and objections will be  
20 made, and rulings will be made.

21          You can be sure that you've informed me and my  
22 stellar law clerks as to the law in this area, and we will be  
23 completely up the curve, and if there are any mistakes of law  
24 made by my rulings, they will be my mistakes not those of my  
25 brilliant law clerks or of distinguished counsel on both

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1 sides.

2 You'll ask questions. There will be objections.

3 I'll make rulings. We will have a few sidebars. The record  
4 will be very clear.

5 Okay, I think we all know what the governing law is,  
6 and it's just a question of where the tripwire lines get  
7 called, and that's why they pay me the big bucks.

8 But that's why my big, big brother, and my big  
9 brother, and my Dutch uncle trained me well in the 20 years  
10 before I was appointed to this position as to what the rulings  
11 ought to be.

12 So I hear you. I have your argument on that point.

13 MR. RUBERT-SCHEWEL: I will now move on to the  
14 government's motion and our response for an anonymous and  
15 sequestered jury.

16 THE COURT: I'll save you the time. There is going  
17 to be an anonymous and partially sequestered jury in this  
18 case. I read your papers. I understand the argument. You  
19 going to have it.

20 I don't want there to be any conclusion or delays  
21 about that. We're going to have an anonymous and a partially  
22 sequestered jury in this case.

23 One of the things I routinely do in my jury  
24 selections -- some of you may know this from having tried  
25 criminal cases before me, I do it in civil cases as well -- my

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1 view is that jurors in all cases are giving up enormous  
2 amounts of time, economic disadvantage, privacy by serving on  
3 juries.

4 And in the modern world where people can friend  
5 people out of the blue and there's all sorts of possibilities,  
6 even in the most plain vanilla contract disputes, I do not let  
7 the lawyers drill down on what people's favorite colors are,  
8 or whether they prefer Fox News to Rachel Maddow.

9 I try to have, in every jury trial, as close to an  
10 anonymous jury as I can get once the jurors have been selected  
11 from the jury panel to come here.

12 I do believe it's a serious problem and I don't want  
13 anyone to be unduly burdened. I think the record is very  
14 clear here, given the nature of the case. But, candidly, if I  
15 can do this in virtually every case involving a slip-and-fall  
16 I would do it.

17 So you've made your record. I will give a full  
18 ruling on the record. Your objections to my ruling are  
19 certainly preserved. It will be part of my written order,  
20 which you will have on or before Thursday.

21 But I just want to you understand we're going to  
22 proceed in that fashion. I think it can be done in a way, and  
23 I will do it in a way that is completely nonprejudicial to  
24 either side.

25 As I said, I do it as much as I can in a simple

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1 slip-and-fall case. I just believe it's important in the  
2 modern area to protect the integrity of the jury system and  
3 not to have people concerned about things, whether it's cell  
4 phones in the hands of members of the public. They are not  
5 going to have that issue in some cases. It's just terribly  
6 important, and I think it goes to the integrity of the jury  
7 system.

8 So feel free to preserve your objection. I read  
9 your papers. I understand it. I would do it in all cases, if  
10 I could do it, just because I don't think it's something that  
11 enhances the jury system to have jurors subject to  
12 meddlesomeness from lawyers and from the public, directly or  
13 indirectly. It's just not needed.

14 So objection noted, objection preserved.

15 MS. MACEDONIO: Your Honor, just following up on  
16 that. The parties have been working on a joint questionnaire.  
17 I know I had previously sent one to the Court.

18 THE COURT: Yes.

19 MS. MACEDONIO: We have since revised that, given  
20 some discussions we've had amongst the parties. I sent  
21 another version of it to the government this morning. I know  
22 they haven't had the opportunity yet to review it. We just  
23 like the opportunity to continue to confer with one another --

24 THE COURT: Yes, please do.

25 MS. MACEDONIO: -- and give the Court the final

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1 version.

2 THE COURT: I much prefer to have a joint  
3 submission. It not only helps my friends on 17th floor, but I  
4 just want to emphasize, that I know counsel on both sides are  
5 particularly sensitive to the protections of the jury because,  
6 as we've seen, it's not simply an issue of defendants or the  
7 government being inappropriate in terms of anonymity with  
8 juries. There have been historically, I don't mean in this  
9 district but elsewhere, real problems with that on both sides.

10 So please continue to work on that and hopefully we  
11 can come up with the *voir dire* that is acceptable to all.

12 But I will do it, and I will do it in a way that  
13 makes it clear that this is about protecting jurors' sense of  
14 privacy in the internet age, and in the age of the lack of  
15 privacy on so many regards.

16 It's not about criminal cases. It's not about  
17 alleged terrorist cases. It's about the modern era and our  
18 lack of privacy as citizens. And I think it's a much deeper  
19 and broader problem, not that these are not important issues  
20 for our case, but these are important issues with the entire  
21 process.

22 And I've thought a lot about this, and I come at  
23 this from a very, very much more global, not to denigrate the  
24 criminal world, but a much more global concern about privacy  
25 of jurors because I've had it in issues in civil cases going

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1 back to the 1970s, before any of you folks were born so, okay.

2 Other issues?

3 MR. HAGGANS: No, Your Honor. I would just state  
4 for our FISA motion that we would just rest on our motion. We  
5 have no oral argument on that.

6 THE COURT: Okay, thank you.

7 Anything else from the defense side?

8 MS. MACEDONIO: Your Honor, I have a request from  
9 Mr. Kasimov to adjourn the start of the trial date, given it's  
10 proximity to September 11th.

11 THE COURT: Interesting request.

12 I'm not going to make reference to any other  
13 adjourned proceedings that were supposed to happen in  
14 Camp David this week, but go ahead.

15 MS. MACEDONIO: I would like the opportunity to just  
16 briefly address this in writing. I'll get it in as quickly as  
17 I can.

18 THE COURT: Well, let me ask the government what  
19 their response is to this concept?

20 MR. PRAVDA: Your Honor, we object.

21 And we particularly object because defense counsel  
22 has known for quite sometime what date this trial is scheduled  
23 to begin. We have now turned over all of our 3500 material,  
24 which I know -- I note for the Court that they requested we  
25 turn over far in advance, and in some cases we accommodated

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1 them for that, and this smells a lot like --

2 THE COURT: Now, now. Now, now. I'm just  
3 suggesting before you go on, think about -- think about what  
4 you're going to say.

5 MR. PRAVDA: Eighteen years we moved from  
6 September 11th. ISIS is not responsible for the World Trade  
7 Center attack. There's no connection between what the charges  
8 are in this case, what the defendant is alleged to have done  
9 in this case and what happened on September 11th, other than  
10 the mere fact that the subject matter is a terrorism trial.

11 But that alone is not enough to warrant moving the  
12 trial date, particularly where the government has already been  
13 moving towards getting everything ready for that date.  
14 Witnesses have made travel plans. There are hotel  
15 reservations booked. People are coming in from other parts of  
16 the United States to testify in this case, and this is a  
17 belated request that the Court should reject, in our opinion.

18 THE COURT: What is your response?

19 MS. MACEDONIO: Your Honor, we indeed did know when  
20 the trial was going to be. My client has asked me to make the  
21 application, I am complying with his request.

22 And if the Court wants to entertain anything in  
23 writing, I'd be happy to do so.

24 THE COURT: I'm happy to entertain anything in  
25 writing, and I will certainly make a ruling on or before

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1 conference.

2 What time are we meeting on Thursday?

3 MS. MACEDONIO: 2p.m.

4 THE COURT: 2 p.m.? Is that the time?

5 MS. MACEDONIO: I'm sorry, Your Honor.

6 THE COURT: 10 a.m. On Thursday?

7 MS. MACEDONIO: Thank you.

8 THE COURT: Okay.

9 But you should anticipate that the motion will be  
10 denied and that we will go to trial next week as scheduled for  
11 planning purposes on your end.

12 I don't want you to say, gee, Judge, you waited  
13 until Thursday, and now we have a problem. So assume that  
14 we're going forward, unless I tell you that we're not, and I  
15 will tell you on or before Thursday at 10 a.m., when we are  
16 together again.

17 MS. MACEDONIO: Understood, Your Honor.

18 THE COURT: Okay.

19 MS. MACEDONIO: When the Court came out, you listed  
20 a series of motions that had been submitted. I'm not sure if  
21 the codefendant's motion is in play, the motion to dismiss  
22 Counts One and Two.

23 That may have been dismissed by the Court as moot.  
24 To the extent that it has not been, we would just rely on the  
25 papers submitted by the codefendant.

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1 THE COURT: Yes, I understand that.

2 MS. MACEDONIO: The Court also referenced the  
3 government's motion to preclude the entrapment defense. That  
4 will not be a defense that Mr. Kasimov will pursue.

5 THE COURT: Including a derivative entrapment?

6 MS. MACEDONIO: That's correct, Your Honor.

7 THE COURT: Okay.

8 MS. MACEDONIO: I don't think we have anything else.

9 THE COURT: Okay.

10 Anything else from the government?

11 MR. PRAVDA: Your Honor, if the Court wishes to  
12 entertain argument with respect to the motion to dismiss Count  
13 One and Two, I'm happy to provide the Court with that. We did  
14 not treat it as moot, even though it has been filed by  
15 Mr. Stern.

16 THE COURT: I'm denying the motion.

17 MR. PRAVDA: Okay. Thank you.

18 And I think that that covers all of the motions that  
19 the Court listed.

20 THE COURT: All right.

21 Is there anything else from the defense today?

22 MS. MACEDONIO: No, Your Honor. As soon as the  
23 parties have had the opportunity to fully vet the  
24 questionnaire, we'll get it to the Court.

25 THE COURT: Thank you.

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1 Anything else from the government?

2 MR. PRAVDA: No, Your Honor.

3 THE COURT: Thank you.

4 And I understand, Mr. Stern -- you're looking  
5 particularly fetching -- you have an application to make, sir?

6 MR. STERN: Yes. There's apparently an order that  
7 was issued under seal regarding Docket Number 370, and my  
8 application is that that order be mailed to me.

9 THE COURT: That order will be emailed to you  
10 pursuant to your request. Happy to do so. So order.

11 MR. STERN: Thank you.

12 THE COURT: Anything else?

13 MS. MACEDONIO: I'm sorry, Your Honor, I forgot to  
14 include that I sent an order over, a proposed order over to  
15 the Court regarding the defendant's ability to submit clothing  
16 to the MDC so that --

17 THE COURT: I thought I had signed that order. No,  
18 no, I believe I have. Didn't I sign that order? Yes?

19 THE LAW CLERK: No.

20 THE COURT: No?

21 Why don't you submit another copy of it --  
22 Mr. Jackson was out the last several weeks.

23 Do we have it? What's the number?

24 THE COURTROOM DEPUTY: Oh, Judge, she handed it up  
25 before the start of the conference.

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1 THE COURT: Just now?

2 THE COURTROOM DEPUTY: Yes.

3 THE COURT: Why don't you hand it to me and I will  
4 sign it.

5 THE COURTROOM DEPUTY: I'm sorry.

6 THE COURT: That's okay. You're obviously just back  
7 from holiday, Mr. Jackson, and I get it.

8 I take it -- let me just -- have you shown a copy of  
9 the proposed order to your adversary? I have two copies.

10 MS. MACEDONIO: I haven't.

11 THE COURT: Why don't you show it to the government  
12 see if they have any objections to the proposed order.

13 (Proffering.)

14 (Pause.)

15 MR. PRAVDA: Your Honor, the government has reviewed  
16 the order and has no objection.

17 THE COURT: The Court is signing the order, and  
18 shall we mark this Court 1 to this proceeding, or just go with  
19 the ECF number? What do you suggest?

20 THE COURTROOM DEPUTY: It can be Court 1, Judge. I  
21 can mark it right now.

22 THE COURT: Why don't you do that, Court 1.

23 (Court Exhibit 1, was received in evidence.)

24 THE COURT: Thank you.

25 May I have a motion from the government to have

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1 Court 1 admitted into evidence, please?

2 MR. PRAVDA: So moved, Your Honor.

3 THE COURT: Any objection?

4 MS. MACEDONIO: No.

5 THE COURT: It's admitted. The Court notes that it  
6 does allow the defendant to have the tie, so there you go.

7 MS. MACEDONIO: Thank you.

8 THE COURT: Okay. You're welcome.

9 Anything else?

10 MS. MACEDONIO: One final issue, Your Honor.

11 We provided the government with a hard drive that  
12 they can send directly to the MDC with Mr. Kasimov's phone  
13 dump and the reports that were generated from that. We would  
14 just ask that you do that as quickly as possible, given the  
15 upcoming trial date.

16 THE COURT: I take it there are no security, FISA,  
17 SCIF-type issues with respect to the phone; is that right?

18 MR. PRAVDA: Not with respect to Mr. Kasimov's  
19 phone, Your Honor.

20 MS. MACEDONIO: That's it. Thank you, Your Honor.

21 THE COURT: You're very welcome.

22 We'll see you folks Thursday at 10 a.m.

23 MR. PRAVDA: And then the last thing from the  
24 government, Your Honor, is just to make a record that we  
25 turned over the 3500 material at the beginning of this

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1 appearance to defense counsel for the remaining witnesses.

2 We had previously turned over 3500 material for the  
3 cooperating witnesses, and we will be filing a short letter on  
4 ECF later today to reflect that.

5 THE COURT: So noted.

6 MS. MACEDONIO: The Court should also know that the  
7 parties have been entertaining various stipulations to try and  
8 move the trial along in an expeditious manner. We'll continue  
9 to discuss those stipulations with the attorneys for the  
10 government to make sure that we can further that process.

11 THE COURT: I appreciate that, Ms. Macedonio, and,  
12 Ms. Sharkey, and file it on ECF. Thank you very much.

13 MS. SHARKEY: Thank you.

14 THE COURT: I believe we're adjourned.

15 I think it would be a good idea to maybe take a  
16 moment to make it clear to the court reporter what portions  
17 are and are not under seal, which I think the court reporter  
18 was asking me desperately to make sure we do before you folks  
19 depart.

20 Is that something we can do?

21 MS. MACEDONIO: Absolutely, Your Honor.

22 THE COURT: How do you want to do that mechanically,  
23 do you want to have time to do that?

24 MR. KESSLER: So, Your Honor, we can just go over to  
25 the court reporter and talk to her at the close of the

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1 session, because I think the record already reflects the  
2 Court's direction about what part can be sealed, so we can  
3 just clarify that.

4 THE COURT: Right. And as long as you're in  
5 agreement, that's fine. In the unlikely event that there is  
6 disagreement, you will let me know what the area of  
7 disagreement is and we'll hash that out on Thursday. But I  
8 know the court reporter has realtime up and running, so  
9 hopefully there shouldn't be any issues with respect to that.

10 Okay? Anything else?

11 MS. SHARKEY: No.

12 MR. PRAVDA: No.

13 THE COURT: Thank you.

14 I appreciate a very well argued set of motions.

15 Thank you. We're adjourned.

16 MS. MACEDONIO: Thank you.

17

18 (Whereupon, the matter was concluded.)

19

20 \* \* \* \*

21

22 I certify that the foregoing is a correct transcript from the  
23 record of proceedings in the above-entitled matter.

24 s/ Linda D. Daneleczyk

September 13, 2019

25 LINDA D. DANELECZYK

DATE